

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TYSON MARSHEK,

Petitioner,

Case No. 06-CV-12902  
HONORABLE AVERN COHN

v.

H.J. MARBERRY,

Respondent.

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**ORDER VACATING ORDER DENYING A CERTIFICATE OF APPEALABILITY**

On January 17, 2007, the Court issued an order granting Petitioner's motion to proceed in forma pauperis and denying a certificate of appealability. The first paragraph of the Order states that "[t]his is a habeas case under 28 U.S.C. § 2254" and that Petitioner is "a state prisoner." This is incorrect. Rather, as stated in the order denying the petition, filed December 18, 2006, this is a habeas case under 28 U.S.C. § 2241 and Petitioner is a federal prisoner.

Because this is a case under § 2241 by a federal prisoner, a certificate of appealability is not required in order to appeal. See Witham v. United States, 355 F.3d 501, 504, (6<sup>th</sup> Cir. 2004) (stating that "[t]he statute [§ 2241] does not require a certificate of appealability for appeals from denials of relief in cases properly brought under § 2241 , where detention is pursuant to federal process." )

Accordingly, the portion of the Court's January 17, 2007 order denying a certificate of appealability is VACATED. The portion of the Court's order granting Petitioner in forma pauperis status on appeal remains.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: January 25, 2007

I hereby certify that a copy of the foregoing document was mailed to the parties of record and Tyson Marshek, 11472-021, FCI Milan, P.O. Box 1000, Milan, MI 48160 on this date, January 25, 2007, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160